(1) Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

♦

Mohan Ahuja,

Petitioner,

v.

University of California; Governor Pete Wilson, Richard Atkinson, President of UC; Regents of UC; University of California, San Diego; Robert Dynes, Chancellor of UCSD; Robert Conn, Dean of School of Engineering; Gill Williamson; David Miller, Associate Dean of School of Engineering; Garrison Cottrell; Marjorie Caserio, Ex-Acting Chancellor of UCSD; Nannette Caldararo; Richard Attiyeh; and James E. Holst.

Respondents.

♦

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA IN PETITION # S087974.

♦

PETITION FOR A WRIT OF CERTIORARI

♦

Mohan Ahuja, *Pre Se*
Counsel of record for the Petitioner

Please Serve:
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15332 Antioch Street, #404
Pacific Palisades, CA-90272
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42 pp

QUESTIONS PRESENTED

1. Whether Supreme Court of the State of California, Court of Appeal, Fourth Appellate District, Division One, and Superior Court Case in their rulings, orders, and opinions have denied due process guaranteed by Fourteenth Amendment of the U.S. Constitution?

2. Whether a Supreme Court of a State, in this case California, can deny review when following questions have been raised in a petition for review?

3. Whether a Superior Court can dismiss a Complaint, with prejudice and without leave to amend, that component of the Complaint which is for the claim of "Violations of Verbal Promises and Agreements/Contracts" on the ground that Statue of Limitation had expired barring the claim, when the Petitioner had pleaded consistently in the Superior Court Complaint as well as in the Petitioner's United States District Court Complaint, Case No. 98CV07355 BTM (JAH) which was filed on 17 April, 1998, hereinafter referred to as "Federal Court Complaint, that the verbal promises were made by the Defendants' until 28 June 1996 and yet the Superior Court concluded inconsistency in pleading and the Superior Court Complaint was filed on 19 June 1998, well within statue of limitation of 2 years as required by Cal. Civ. Code § 339 (Deering 1997)?

4. Whether a Superior Court can dismiss a Complaint, and with prejudice and without leave to amend, that component of the Complaint which is for "Violations of Verbal Promises and Agreements/Contracts" based on written statements of the Respondents/Defendants that were contrary to the Verbal Promises, or making of contrary statements in writing by the Respondents/Defendants and in Verbal Promises by the same Respondents/Defendants itself violated laws, particularly when the matter of whether or not "Violations of Verbal Promises and Agreements/Contracts" occurred and whether Defendants made the promises up until 28 June 1996 is a matter to be decided by the tier-of-fact and not by the tier-of-law?

5. Whether the Superior Court erred in denying amendment made in a filing on 17 August 1996 with the Superior Court, titled "A) Ex parte note highlighting that Defendants have chosen to not address 7 out of 8 Claims of Relief in my Complaint filed on 19 June 1998; thus defendants have violated 30 Day limit from day of Filing the Complaint. B) More details on my Claims of Relief filed on 19 June 1998"?

6. Whether a Superior Court can dismiss the original Complaint of a Pro Per Plaintiff/Petitioner with prejudice and without leave to Amend and consider it as one cause complaint given in the title (i.e., Violations of Verbal Promises and Agreements/Contracts), when 8 causes of actions

(i.e., 1: Defendants violated two Verbal Promises and Agreements/Contracts; 2: Defendants discriminated against me, harassed me, and finally retaliated against me and terminated my employment; 3: Defendants did Fraud; 4: Defendants did Conspiracy; 5: Defendants did Cover up; 6: Defendants Violated my Civil Rights; 7: Defendants did intentional Tort; 8: Defendants did Obstruction of Justice) had been stated in the body of the complaint?

7. Whether the Superior Court, in its ruling on 25 August 1998, and the Appeals Court erred in OVERLOOKING THE AMENDMENT already made in filing of 17 August 1998 to the original Complaint and particularly since the amendment gave details of all the 8 causes?

8. Given that THE AMENDMENT had already been made in filing of 17 August 1998 to the original Complaint, whether a Superior Court if it had any objection to the form of amendment could at most ask to change the form and re-amend the complaint, given that the Plaintiff/Petitioner had demonstrated that the Complaint can be amended giving details, and whether denial of leave to amend was an error?

9. Whether a Superior Court erred in denying the leave to amend when the Complaint of this *Pro Per* Plaintiff/Petitioner had **allegations under Eleventh Amendment of the Constitution of the United States**?

10. Whether the Superior Court erred in ruling that internal administrative remedies of University of California San Diego had been not been exhausted when all internal Remedies had been EXHAUSTED as per a LETTER from UNIVERSITY of California (henceforth to be referred to as "UC") presented to the Superior Court?

11. Whether the Superior Court erred in its ruling when it overlooked the allegations and facts that the University of California had Violated its own PROCESS?

12. Whether the Appeals Court erred in denying Appeal on the grounds that the Plaintiff/Petitioner had not shown how can the Complaint be amended when the Plaintiff/Petitioner had well articulated how the Superior Court Complaint can be amended and the amendment already filed on 17 August 1998 and had been again presented to the Appeals Court and the details given therein had survived three demurrers by the Respondents/Defendants in the Case No 98CV0735 federal court complaint and thus there was more than REASONABLE possibility to Amend the Superior Court Complaint if amendment was permitted?

13. Whether the Appeals Court erred in failing to ADDRESS the Claim of Verbal Promise of 30 Million dollars as settlement for Discrimination and harassment and instead used unrelated argument to

opine that the claim is time barred by linking it solely with termination of employment?

14. Whether the Appeals Court erred in failing to rule on two of the Four parts of the Plaintiff/Petitioner/Appellant's Opening Brief?

15. Whether the Appeals Court erred in failing to acknowledge that the Respondents had admitted that the Superior Court erred in its ruling?

16. Whether the Supreme Court of the State of California erred in denying the Petition for review?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the Supreme Court of California Petition for Review S087974, Court of Appeal, Fourth Appellate District, Division One, Appeal No. D031995, and Superior Court Case No. 721674 were as listed in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgement and opinion of the Supreme Court of California entered in the above-entitled matter on 28 June 2000.

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OPINIONS BELOW

25 August 1998 Tentative ruling of the Superior Court Case No. 721674 that became final on 18 September 1998 along with the 18 September 1998 order stating confirmation of the ruling becoming confirmed and final order are printed as Appendix-A, *infra,* 1a. 7 April 2000 Opinion of the Court of Appeal, Fourth Appellate District, Division One, Appeal No. D031995 is printed as Appendix-B, *infra,* 9a. 28 June 2000 Decision of the Supreme Court of California denying Petition for Review (California Supreme Court # S087974) is printed as Appendix-C, *infra,* 20a.

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JURISDICTION

The Supreme Court of California denied the Petitioner's Petition for Review (California Supreme Court # S087974) in an order filed on 28 June 2000. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). This Petition is filed under this Courts Rule 11.

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CONSTITUTIONAL PROVISIONS

Fourteenth Amendment of the U.S. Constitution:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without **due** process of law; nor deny to any person within its jurisdiction the **equal protection of the laws.**

Fifth Amendment of the U.S. Constitution:

Requirement of "fair play and substantial justice".

STATEMENT

A. C LAIMS OF FACTS

Staring 1 July 1992, the Petitioner was hired as a Visiting Assistant Professor by University of California San Diego ("UCSD"). Before the Petitioner joined, Gill Williamson, then Chairperson of the CSE Department, promised an Academic Faculty, i.e., Professorial, appointment to the Petitioner. This promise did not get fulfilled. Instead UCSD and University of California ("UC") discriminated against, harassed, and finally retaliated against and terminated Petitioner's employment effective from 30 June 1996. Further, UCSD and UC did Fraud, Conspiracies, Cover up

Conspiracy, Violations of Civil Rights, and Violations of Verbal Promises and Agreements. Each of these led to a claim of relief. UC's actions also led to a claim of relief for Tort.

UCSD and its parent organization UC discriminated against the Petitioner because the Petitioner belongs to a subclass that is an overlapping combination of protected classifications under Title VII. Discrimination and Harassment due to such overlapping combination is illegal. Jefferies v. Harris County Community Action Assoc., 615 F.2d 1025 (1980). Thus, UC violated 42 U.S.C. § 2000e et seq. (1997). On 23 January 98, the Petitioner received a letter from the Justice Department under procedures of Equal Employment Opportunity Commission giving right to sue under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (1997).

B. PROCEEDINGS BELOW

On 19 June 1998, the Petitioner filed a civil suit in the Superior Court of California, San Diego, Case No. 721674 for 8 causes of relief, i.e., 1: Defendants violated two Verbal Promises and Agreements/Contracts; 2: Defendants discriminated against me, harassed me, and finally retaliated against me and terminated my employment; 3: Defendants did Fraud; 4: Defendants did Conspiracy; 5: Defendants did Cover up; 6: Defendants Violated my Civil Rights; 7: Defendants did intentional Tort; 8: Defendants did Obstruction of Justice. All the claims were stated in the body of the Complaint and the first was stated in the title of the Complaint.

Defendants/ Respondents filed a general demurrer as to the first Claim of Relief.

On 17 August 1998, the Petitioner filed and amendment the complaint giving More details of the 8 claims and in the same filing highlighted that Defendants had not addressed 7 of the 8 claims and so had violated 30 day limit to respond (and thus were in default.)[1]

On 25 August 1998, the Superior Court filed a Tentative ruling. On 18 September 1998, the Superior Court filed an order stating that the Tentative Ruling is the order and that 25 August ruling has become final and confirmed. In this ruling the Court overlooked the amendment made on 17 August 2000 by the Petitioner. And the Superior Court did so deliberately as on 18 September 1998 hearing the amendment was brought to the Superior Court's attention.

Superior Court considered the Complaint as a Complaint solely for the claim of "Violations of Verbal Promises and Agreements/Contracts" while it was an 8 cause complaint and the 8 causes were as follows: 1: Defendants violated two Verbal Promises and Agreements/Contracts; 2: Defendants discriminated against me, harassed me, and finally retaliated against me and terminated my employment; 3: Defendants did Fraud; 4: Defendants did Conspiracy; 5: Defendants did Cover up; 6: Defendants Violated my Civil Rights;

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[1] 17 August 1998 Filing was titled "A) Ex parte note highlighting that Defendants have chosen to not address 7 out of 8 Claims of Relief in my Complaint filed on 19 June 1998; thus defendants have violated 30 Day limit from day of Filing the Complaint. B) More details on my Claims of Relief filed on 19 June 1998." This filing was also lodged with "APPELLANT'S NOTICE OF LODGMENT" with the Appeals Court on 9 February 2000.

7: Defendants did intentional Tort; 8: Defendants did Obstruction of Justice.

Superior Court dismissed, with prejudice and without leave to amend, that component of the Complaint which is for the claim of "Violations of Verbal Promises and Agreements/Contracts" on the ground that Statue of Limitation had expired barring the claim. This reasoning was incorrect and it was noted to the Appeals Court as follows: The Petitioner had pleaded consistently in the Superior Court Complaint as well as in the Petitioner's United States District Court Complaint, Case No. 98CV07355 BTM (JAH) which was filed on 17 April, 1998, hereinafter referred to as "Federal Court Complaint", and had pleaded that the verbal promises were made by the Defendants' until 28 June 1996 and the Superior Court Complaint was filed on 19 June 1998, well within statue of limitation of 2 years as required by Cal. Civ. Code § 339 (Deering 1997). The Superior Court Ruled that the Petitioner's allegations that the Defendants made Verbal Promises up until 28 June 1996 is inconsistent with the Petitioner's Federal Court Complaint. The Superior Court correctly noted that the Federal Court Complaint stated that Defendants had Written to the Petitioner in their letter dated 5 April 1996 (which the Petitioner received on 9 April 1996) that Petitioner's employment will be terminated. However, from this the Superior Court erroneously concluded that the Petitioner had pled inconsistently. There is no inconsistency on the part of the Petitioner. Actually, an inconsistency is in verbal and written stands of the Defendants. It is noteworthy that in the Federal Court Complaint of which the Superior Court took judicial

notice of and cited in support of its erroneous conclusion of inconsistency, the Petitioner had also stated in line 7-9 on page 24 and the again in line 16-17 of page 34 that Defendants made verbal promises all the way up to June 1996. The Federal Court did not consider knowledge of the Petitioner on 9 April 1996 of the letter of termination dated 5 April 1996 (stated in the Complaint to the Federal Court) as inconsistent with allegations of Verbal Promised made by the Defendants up until June 1996 (stated in the Complaint to the Federal Court in line 7-9 on page 24 and the again in line 16-17 of page 34). However, the Superior Court concluded an inconsistency in pleading by the Petitioner where there is no inconsistency. Actually, an inconsistency is in verbal and written stands of the Defendants. Further, in the amendment made in a filing on 17 August 1996 with the Superior Court, also, the Petitioner stated that Defendants made Verbal Promises up until 28 June 1996. See lines 3-4 of page 25 of Exhibit-I of 17 August 1998 filing with the State/Superior Court titled "A) Ex parte note highlighting that Defendants have chosen to not address 7 out of 8 Claims of Relief in my Complaint filed on 19 June 1998; thus defendants have violated 30 Day limit from day of Filing the Complaint. B) More details on my Claims of Relief filed on 19 June 1998." An exact copy of Exhibit-I had also been filed as amended complaint in the Federal Court case (in addition to filing separately in the Superior Court Case). As stated earlier, the Federal Court did not consider knowledge of the Petitioner on 9 April 1996 of the letter of termination dated 5 April 1996 (stated in the Complaint to that Court, in lines 15-20 of page 7 of Exhibit-I) as inconsistent with allegations of Verbal

Promised made by the Defendants up until 28 June 1996 (stated in the Complaint to that Court, see lines 3-5 of page 25 of Exhibit-I).

The matter of whether or not "Violations of Verbal Promises and Agreements/Contracts" occurred and whether Defendants made the promises up until 28 June 1996 is a matter to be decided by the tier-of-fact and not by the tier of-law. Hence, the Superior Court erred and the Appeals Court erred in not recognizing so.

The Superior Court erred in denying amendment made in a filing on 17 August 1996 with the Superior Court, titled "A) Ex parte note highlighting that Defendants have chosen to not address 7 out of 8 Claims of Relief in my Complaint filed on 19 June 1998; thus defendants have violated 30 Day limit from day of Filing the Complaint. B) More details on my Claims of Relief filed on 19 June 1998."

The Superior Court dismissed the original Complaint of this Pro Per Plaintiff/Petitioner, with prejudice and without leave to Amend, and considered it as one cause complaint given in the title (i.e., Violations of Verbal Promises and Agreements/Contracts), when 8 causes of actions (i.e., 1: Defendants violated two Verbal Promises and Agreements/Contracts; 2: Defendants discriminated against me, harassed me, and finally retaliated against me and terminated my employment; 3: Defendants did Fraud; 4: Defendants did Conspiracy; 5: Defendants did Cover up; 6: Defendants Violated my Civil Rights; 7: Defendants did intentional Tort; 8: Defendants did Obstruction of Justice) had been stated in the body of the complaint and further details had been given in the amendment filed on 17 August 1996.

The Superior Court, in its ruling on 25 August 1998, and the Appeals Court OVERLOOKED THE AMENDMENT already made in filing of 17 August 1998 to the original Complaint and did so despite the fact that the amendment gave details of all the 8 causes.

Given that THE AMENDMENT had already been made in filing of 17 August 1998 to the original Complaint, if the Superior Court had any objection to the form of amendment then its should have asked the Petitioner to change the form and amend the complaint, given that the Plaintiff/Petitioner had demonstrated that the Complaint can be amended giving details, and thus denial of leave to amend was an error.

The Superior Court erred in denying the leave to amend when the Complaint of this *Pro Per* Plaintiff/Petitioner had **allegations under Eleventh Amendment of the Constitution of the United States**.

The Superior Court erred in ruling that internal administrative remedies of University of California San Diego had been not been exhausted when all internal Remedies had been EXHAUSTED as per a LETTER from UNIVERSITY of California presented to the Superior Court.

The Superior Court erred in its ruling when it overlooked the allegations and facts that the University of California had Violated its own PROCESS.

On 18 September 1998, the Petitioner filed appeal with the Court of Appeal, Fourth Appellate District, Division One.

On 7 April 2000 the Court of Appeal, Fourth Appellate District, Division One, filed its Opinion on the Appeal of the Petitioner and denied the Appeal; the Petitioner had raised the questions raised herein.

The Appeals Court erred in failing to notice supra noted arguments and questions and erred in denying Appeal on the grounds that the Plaintiff/Petitioner had not shown how can the Complaint be amended when the Plaintiff/Petitioner had well articulated how the Superior Court Complaint can be amended and the amendment already filed on 17 August 1998 and had been again presented to the Appeals Court in a lodgment on 9 February 2000[2] and the details given therein had survived three demurrers by the Respondents/Defendants in the federal court complaint of case No 98CV0735 and thus there was more than REASONABLE possibility to Amend the Superior Court Complaint if amendment was permitted.

The Appeals Court erred in failing to rule on two of the Four parts of the Opening Brief of the Plaintiff/Petitioner/Appellant.

The Superior Court as well as the Appeals Court erred in failing to ADDRESS the Claim of Verbal Promise of 30 Million dollars as settlement for Discrimination and harassment and instead used unrelated argument to opine that the claim is time barred by linking it solely with termination of employment.

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[2] For some strange reason the Appeals Court returned this lodgment of 9 February 2000, by the Petitioner, along with the opinion thus destroying record of it. However, the same is on the Record of the Superior Court as a filing on 17 August 1998.

The Appeals Court erred in failing to acknowledge that the Respondents had admitted that the Superior Court erred in its ruling.

On 2 May 200, the Petitioner filed a Petition for review with the Supreme Court of the state of California.

On 28 June 2000, the Supreme Court of California denied Petition for Review filed by the Petitioner; the Petitioner had noted the arguments given supra and had raised the questions raised herein.

REASONS FOR GRANTING THE WRIT

The questions raised here had been raised with the Lower Courts. Despite it the Lower Courts abused their discretion in their rulings and violated "fairness" guaranteed by the Constitution of California and Fourteenth Amendment of the U.S. Constitution which states "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". [Emphasis added.] By their Rulings the Lower Courts have denied this petitioner the due process and equal protection and have accented to loss of liberty and property of the Petitioner. "Bias and prejudice" of the Lower Court Judges that has impelled them to these

rulings has been due to their motivation to protect people in powerful places, which includes Defendants including Pete Wilson ex-Governor of the State of California, **from legal consequences of their illegal actions**. Thus this Petition for a writ of certiorari is of such importance as to receive close scrutiny by this Court and deserves to be granted; or else the founding principle of our laws will be shaken.

In rulings of the Lower Courts, requirement of "fair play and substantial justice", guaranteed under Fifth Amendment of the U.S. Constitution and Under 28 USC § 1404, has been violated.

It is Noteworthy that the Petitioner had not only stated the 8 claims in the Original Superior Court Complaint but had amended the Superior Court Complaint on 17 August 1998 and had elaborated on these claims and had presented all 8 causes in the caption of the Exhibit-I of 17 August 1998 filing, as required by Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1999) ¶ 6:30, p. 6-8. Further, in Exhibit-I of the filing of 17 August 1998, the Petitioner had stated each of the 8 causes of actions in the Complaint Separately, identifying its number 1 through 8, nature and the parties against whom each is asserted, as per Cal. Rules of Court, Rule 201(g).

In their Demurrer Defendants/Respondents claimed **Eleventh Amendment** of the U.S. Constitution with respect to some parts of the Plaintiff/Petitioner's complaint. The Lower Courts erred and abused its discretion in this regard as well in denying the leave to

Amend. "Leave to amend shall be freely given when justice so requires, particularly where amendment to pleading is aimed at curing **Eleventh Amendment** pleading defect." Gramegna v Johnson (1988, CA11 Ala) 846 F2d 675 and the litigant is *Pro Per*.

It is noteworthy that the Petitioner's Complaint has **allegations under Eleventh Amendment of the Constitution of the United States**.

This Court should accept certiorari of this legal matter in which the Lower Court's have shown utter disregard to fairness promised by the law and utter disregard for the law of this lend.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mohan Ahuja,
Pre Se

Please address all Communication to:

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APPENDIX

APPENDIX A

IN THE SUPERIOR COURT OF THE SATES OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

NO. 721674

Mohan Ahuja,

Plaintiff,

v.

University of California et al.,

Defendants.

(Filed 25 August 1998)

Before Anthony C. Joseph, Judge of the Superior Court Judge.

Joseph, Judge of the Superior Court Judge:

Tentative Ruling on Demurrer (August 28[3], 1998 telephonic ruling):

Defendant's Demurrer to Plaintiff's Complaint is SSSTAINED WITHOUT LEAVE TO AMEND. Defendants have successfully shown as a matter of law: (1) Plaintiff's claim for breach of oral contract is time-barred by the applicable statue of limitation; (2) Plaintiff as a public employee has no contractual right to employment with the University of California, and

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[3] Petitioner believes that here "28" is a typographic error on part of the Judge. Footnote added.

(3) Plaintiff has failed to exhaust his administrative remedies by failing to pursue a writ of mandate. As these defects cannot be cured, Plaintiff is denied leave to amend his complaint.

I.

PLAINTIFF'S ACTION IS BARRED BY THE STATUE OF MINITATIONS

Defendants' burden on a demurrer is to show a defect on the face of Plaintiff's Complaint that makes Plaintiff's cause of action invalid. All facts pleaded in the Complaint must be taken as true, unless Defendants can show through matters judicially noticed that those facts are contradicted. See Serrano v Priest (1971) 5 Cal.3d 584, 591; Evid Code § 451, 453. When the complaint and matters judicially noticed disclose that the statue of limitations bars the action, a demurrer is appropriate. See CCP § 430.10(e) and § 430.30(a); Saliter v Pierce Brothers Mortuaries (1978) 81 Cal.App.3d 292, 300, fn. 2.

CCP § 339 provides for a two year statue of limitations for actions based on breach of an oral contract. The cause of action deemed to have accrued upon the discovery of the loss or damage suffered by the Plaintiff. CCP § 339(1).

In this case, Defendants have requested the Court take judicial notice of Plaintiff's United States District Court Complaint. Case No. 98CV07355 BTM (JAH), which was filed on 17 April, 1998 (see Defendants' Exhibit 2, hereinafter referred to as "federal court complaint.) Defendants' request is granted. In the federal court complaint, Plaintiff admits his letter of termination was dated April 5, 1996 (see page 3, lines 20-21), and further admits that "UCSD

informed [Plaintiff] of termination" on April 9, 1996 (see page 11, lines 18-19). Based on these allegations, Plaintiff was certainly aware by April 9, 1996, at the latest, that he was being terminated by Defendants. The statue of limitations for breach of a oral contract promising a certain employment of a salary began to accrue as of that date because Plaintiff knew he was being permanently terminated from his employment. As Plaintiff's state court complaint was filed more than two years after April, 9, 1998. Plaintiff's cause of action for breach of oral contract is time barred.

Plaintiff argues on opposition that Defendants' promised of full professorship and $30 Million dollars continued up until Plaintiff's last day of employment, which was June 29, 1998. Such allegations are inconsistent with the facts pled in Plaintiff's federal court complaint, wherein Plaintiff admits he was aware of his termination as of April 9, 1996[4]. Plaintiff cannot simultaneously be terminated from employment while receiving promises of employment. If Plaintiff felt Defendants wrongfully broke oral promises in connection with his employment, Plaintiff had an obligation to bring his complaint within two years of the "discovery of the loss or damage suffered." See CCP § 339(1). Plaintiff's discovery occurred at the least on April 9, 1996[5], the date he admits receiving notification of his termination of employment.

Plaintiff further argues in opposition that Defendants' demurrer wrongfully focuses on only his "'reach of verbal agreements"' cause of action, when

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[4] The Petitioner believe that the Judge meant to write 1996 while he wrote 1998. Footnote added.

[5] The Petitioner believe that the Judge meant to write 1996 while he wrote 1998. Footnote added.

Plaintiff believes he has validly stated seven other claims for relief (including discrimination, harassment, retaliation, fraud, conspiracies, cover up conspiracy, violations of civil rights, intentional tort, and obstruction of justice). California Rule of Courts 3.12 subdivision (g), requires that each complaint contain the following:

> "Each separate cause of action or affirmative defense in a pleading shall specifically identify its number (e.g., "First cause of Action"); **its nature (e.g., "for fraud")**; the part asserting it, if more than one party is represented in the pleading (e.g., "by Plaintiff Jones"); and the party or parties to whom it is directed (e.g., "against Defendant Smith")." (Emphasis added).

Plaintiff's complaint alleges only one cause of action for "violation of verbal promises and agreements/contracts." Breach of oral contracts is the only claim stated in the title of Plaintiff's complaint, and the only cause of action alleged in the body of Plaintiff's complaint. Plaintiff has not stated the required elements for any other cause of action, and Plaintiff cannot escape a valid demurrer by stating he "intends" to add more causes of action later. Defendants must be placed on proper notice of all claims alleged against them, and Defendants have properly demurred to the only claim stated by Plaintiff.

II.

PLAINTIFF AS A PUBLIC EMPLOYEE HAS NO CONTRACULA RIGHT TO EMPLOYEMENT WITH DEFENDANTS

Plaintiff was a public employee and therefore employed pursuant to statue, not contract. Courts have rejected a public employee's *contractual* right to employment, which is what Plaintiff alleges is this action. See Miller v. State of California (1977) 18 Cal.3d 808, 813-14. Plaintiff's only alleged cause of action for *breach of oral contract*, based on allegations that UC system and the individual defendants broke their promises of full professorship employment and a salary of $30 Million dollars. Said contractual claim is not a proper cause of action by a public employee, and therefore Plaintiff has failed to state a valid cause of action. Plaintiff does not address this argument in opposition, and Defendants' demurrer on this ground is sustained.

III.

PLAINTIFF HAS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

Plaintiff has failed to exhaust his administrative remedies by failing to first file a writ of mandate prior to a civil action for damages. The proper method of obtaining judicial review of a public agency's decision is by instituting a proceeding for writ of mandate. See Bunnett v. Regents of University of California (1995) 35 Cal. App. 4th 843, 848; McGill v. Regents of the University of California (1996) 44 Cal. App. 4th 1776, 1785-86. Here, Plaintiff has brought a civil action against the University and the individual defendants without first seeking a writ of mandate. Plaintiff has failed to exhaust his administrative remedies, and Defendants' demurrer on this ground is sustained.

In his opposition, Plaintiff does not specifically raise arguments pertaining to this issue, but rather refers the Court to his "Exhibit-A of Exhibit-I" of which

Plaintiff requests the Court take judicial notice. Exhibit-I is Plaintiff' 38-page amended complaint in the federal court action, which contains no file-stamp from the District Court. Plaintiff's request for judicial notice is denied as the Court has insufficient evidence that the pleading Plaintiff has attached as "Exhibit-I" is actually filed with any State of District Court.

Plaintiff's "Exhibit A to Exhibit I" is a copy of Plaintiff's opposition to Defendants' Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(6). Even if the Court were to take judicial notice of that document and consider the arguments contained herein, those arguments fail to show a writ of mandate is improper in this instance. Plaintiff's "Exhibit A to Exhibit I" cites to two cases for the proposition that a writ of mandate is not available when the amount sought by a plaintiff is "disputed". In City of Los Angeles v. Rounsavelle (1936) 15 Cal. App. 2d 750, the court held a writ of mandate will not issue against a municipality if the plaintiff's claim is indefinite in amount. Id. at 751-52. The present case does not involve a "municipality", nor does it involve an indefinite amount which cannot be calculated by a court of jury.

Plaintiff's second citation to Singer v. Regents of University of California, San Francisco Superior Court Case No. 950381 (March 1, 1996) has no relevance, as that decision is an unpublished, Superior Court case with absolutely no binding effect on any Court.

As such, Plaintiff has failed to exhaust his administrative remedies by first filing a writ of mandate prior to this action for civil damages. Defendants' demurrer on this ground is sustained.

IV.
CONCLUSION

As these issues are dispositive of Plaintiff's complaint, the Court need not reach the additional arguments raised by Defendants. Defendants' Motion to strike for emotional distress and punitive damages is rendered moot in light of the Court's ruling on the demurrer.

The tentative ruling shall become the final order of the Court nunc pro tunc, effective on the date the tentative ruling was issued, in the event (1) oral argument is no requested, or is requested in an untimely manner; or (2) the court confirms the tentative ruling after oral argument.

IN THE SUPERIOR COURT OF THE SATES OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

No. 721674
Complaint date: 06-19-98[6]
Hearing date 09/18/98
Hearing Time: 10:00 AM
Dept: 44
Filing date: 18 September 1998
Judge: Hon. Anthony C. Joseph
Clerk: M Mass
Reporter: Michael Gallivan, P.O. Box 128, San Diego, CA 92112-4104

Mohan Ahuja,

Plaintiff,

v.

University of California et al.,

Defendants.

(18 September 1998)

Before Anthony C. Joseph, Judge of the Superior Court Judge.

Present for Plaintiff: Mohan Ahuja

Present for Defendants: John S. Adler

This matter having come before the Court this date, the Court Ordered: Confirmed[7].

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[6] The Petitioner believe that the Court mean year "96" and has written "98" by mistake.

APPENDIX B

**IN THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIUFORNIA**

NO. D031995 (SUPERRIOR CT NO. 721674)

Mohan Ahuja,

Plaintiff and
Appellant,

v.

University of California et al.,

Defendants
and Respondents.

Appeal from an order of dismissal of the Superior Court of San Diego County, Anthony C. Joseph, Judge. Affirmed.

(Filed 7 April 2000)

Before O'ROUKE, HIFFMAN, McDONALD, Appeal Court Judges.

O'ROURKE, Appeal Court Judge:

Mohan Ahuja sued the University of California, its chancellors, deans and also several government

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[7] Referring to the 25 August 1998 Tentative ruling of the Superior Court. Footnote added.

officials (collectively University) for damages, claiming University promised him (1) a professorial appointment and (2) $30 Million to settle his termination claim. The trial court sustained University's demurrer to the complaint without leave to amend.

Ahuja appeals, contending the trial Court erroneously interpreted his complaint as containing a single cause of action for breach of oral contract when in fact his complaint alleged two viable causes of action for breach of contract and seven other distinct claims for relief. We determine Ahuja's contention is without merit. We further determine the trial court did not abuse its discretion in sustaining the demurrer without leave to amend in light of Ahuja's failure to articulate how he could amend his complaint to state a cause of action. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Ahuja's complaint alleged as follows: University hired Ahuja as a Computer Science and Engineering (CSE) Visiting Assisting[8] Professor at its San Diego campus (UCSD). The chairperson of the CSE department, on behalf of University, repeatedly promised Ahuja that he would be appointed to a full professorship. Instead of fulfilling its promise, University "harassed" and "retaliated" against Ahuja, terminating his employment effective June 30, 1996. Ahuja generally alleged that University committed

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[8] The Petitioner believe that the Judge meant to write "Assistant" and by mistake wrote "Assisting". Footnote added.

"Fraud, Conspiracy, Cover [U]p, Violations of Civil Rights, [I]ntentional Tort, and Obstruction of Justice." Although Ahuja failed to allege any specific facts supporting these conclusory allegations, he represented that the complaint would be "update[d]" and that he would later "elaborate on these [claims] and add more claims that may be discovered."

Ahuja's further alleged that University acknowledged it had damaged him and promised to pay $30 million to settle his termination claim. On June 28, 1996, University reaffirmed its promise to settle his termination claim, however, it breached that promise.

Ahuja sought the following relief: (1) an unconditional apology from UCSD's President, including an acknowledgement that UCSD's faculty lacks competence in Ahuja's field of research; (2) compensation for University's breach of its oral promise of a full professorship; (3) $30 million for breach of oral settlement agreement; and (4) punitive damages.

University generally demurred to the complaint.[1] In support of its demurrer, University requested judicial notice of Ahuja's complaint in *Mohan Ahuja v. University of California et al.*, United District Court for Southern District of California, Case No. 98CV0735 BTM (hereinafter federal complaint).[2] In his federal complaint, Ahuja alleged that University terminated his employment by letter dated April 5,

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[1] University also moved to strike Ahuja's claims for emotional distress and punitive damages.

[2] On 14 July, 1998, the District court granted University's motion to dismiss as to Ahuja's state claims of fraud, conspiracy and breach of contract.

1996. Ahuja further alleged he received the termination letter on April 9, 1996.

The trial court issue its tentative ruling on August 25, 1998, granting University's request for judicial notice and sustaining its demurrer without leave to amend. The court ruled that University had established as a matter of law: "(1) [Ahuja's] claim for breach of oral contract is time-barred by the applicable statue of limitations, (2) Plaintiff as a public employee has no contractual right to employment with University of California, and (3) Plaintiff has failed to exhaust his administrative remedies by failing to pursue a writ of mandate. As these defects cannot be cured, [Ahuja] is denied leave to amend his complaint."

After hearing argument on September 18, 1998, the trial court orally affirmed it tentative ruling. Ahuja filed his notice of appeal that same day. On October 20, 1998, the trial court entered its written order affirming the tentative ruling, sustaining the demurrer without leave to amend and dismissing Ahuja's complaint with prejudice.

DISCUSSION

I

University contends we lack jurisdiction to hear Ahuja" appeal because Ahuja filed his notice of appeal after the court announced its tentative ruling but before the court issued its written order sustaining the demurrer without leave to amend and dismissing Ahuja's complaint with prejudice. We disagree. Premature filing of a notice of appeal does not make an appeal void. (Cal. Rules of Court, rule 2(c); *Fezzino v.*

Insurance Co. of North Amer. (1957) 152 Cal.App.2d 304, 305.) In cases where a notice of appeal is fled after the trail court announced its intended ruling but prior to entry of its order or judgement, the reviewing court may in its discretion treat the premature notice of appeal as filed immediately after entry of the order or judgement. (cal. Rules of Court, rule 2(c); *Nationwide Mutual Ins. Co. v. Devlin* (1992) 11 Cal.App.4th 81, 84, fn. 1.) Here there is no evidence that University was misled or prejudiced by Ahuja's premature filing. We therefore determine this to be an appropriate case for us to liberally construe the notice of appeal in favor of its sufficiency, and we deem Ahuja's notice of appeal as filed immediately after the court's entry of its order of dismissal. (see *Vilert v. Berger* (1966) 64 Cal.2d 65, 69-70; *Marcotte v. Municipal Court* (1976) 64 Cal.App.3d 235, 239.)

II

In reviewing a ruling on a demurrer, " '[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of facts or law ... .' [Citation] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action [citation]." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) With these principles in mind, we turn to the parties' substantive contentions.

1. *The complaint states only two claims of oral contract*

The parties dispute the number and nature of the causes of action in Ahuja's complaint; Ahuja claims

his complaint allege nine causes of action,[3] while University contends it contained only two claims for breach of contract.

As a preliminary matter, we note that it is common practice to list all causes of action in the caption of the complaint. (See Weil & Brown, Cal. Practice Guoide: Civil Procedure Before Trial (The Rutter Group 1999) ¶ 6:30, p. 6-8.) Here, Ahuja styled his four0page complaint as for "Violations of Verbal Promises and Agreements/Contracts. Other Claims of relief will be added later." We construe Ahuja's caption as admitting that he attempted to allege only two causes of action for breach of oral contract in the complaint as *filed*, but that he might seek leave to add other causes of action later.

Moreover, *all* the operative allegations of Ahuja's complaint concern University's promises of (1) a full professorship and (2) $30 million to settle his termination claim. The complaint referred to University's purported wrongful acts as its "First" and "Second Violation[s] of Verbal Promise[s] and Agreement[s]/Contract[s]." These are the only two cause of action that complaint attempted to state.

Furthermore, a plaintiff must state each cause of action in a complaint separately, identifying its number, nature and the parties against whom it is asserted. (Cal. Rules of Court, rule 201(g).) Here, Ahuja failed to separately set forth and identify individual

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[3] Ahuja Contends his complaint alleged two cause of action for breach of two oral contract as well as seven other claims for: (1) discrimination, harassment, and retaliatory termination; (2) fraud; (3) conspiracy; (4) cover up; (5) violation of civil rights; (6) intentional tort; and (7) obstruction of justice.

causes of action in his complaint.[4] Although, we acknowledge Ahuja's complaint contains words such as "fraud" and "Violations of civil rights," conclusory allegations are not sufficient to state a cause of action. (Code Civ. Proc., § 425.10, subd. (a); 4 Wtkin, Cal. Procedure (1997) Pleading, § 345, pp. 444-447.) Ahuja has failed to allege any ultimate facts sufficient to support the seven non-contract causes of action that he contends on appeal to have alleged. Therefore, we construe Ahuja's complaint as attempting to allege only two claims for breach of oral contract.

2. *Statue of limitations*

Ahuja contends the trial court erred in sustaining University's demurrer to his causes of action for breach of oral contract on statue of limitations grounds. We disagree.

The limitation period for bringing an action based on an oral contract is two years after the action has accrued. (Code Civ. Proc., § 339.) Ahuja filed his complaint on June 19, 1998. He alleged that University repeatedly reiterated its promises of a full professorship and $30 million to settle his termination claim, up to and including his last day of employment

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[4] We note that failure to comply with California Rule of Court, rue 312(g), renders a complaint vulnerable to either a motion to strike (Code Civ. Proc., § 436) or special demurrer for uncertainty (Code Civ. Proc., § 430.10, subd. (f)). (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1999) ¶ 6:113, p 6-24.1) Although University did not attack Ahuja's complaint on these Grounds, Ahuja's failure to comply with California Rule of Court, rule 312(g), supports our determination that his complaint attempted to state only two claims for breach of oral contract.

on June 28, 1996. Ahuja therefore contends he has alleged facts showing his complaint was timely filed.

When ruling on a demurrer, the complaint's allegations are *not* accepted as true if they are inconsistent with facts properly judicially noticed by the court. (*Tushinsky v. Arnold* (1987_ 195 Cal.All.3d 666, 670, fn 3 [when ruling on demurrer, allegations of complaint are regarded as true only to the "extent they are not impeached by matters properly judicially noticed"].) Where facts judicially noticed establish as absolute defense or a deficiency in the complaint, the matter may be adjudicated at the demurrer hearing. (*Cantu v. Resolution Trush Corp.* (1992) 4 Cal.App.4th 857, 8770878; *Bistawroa v. Greenberg* (1987) 189 Cal.App.3d 189, 191-192; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

As already noted, the trial court granted judicial notice of Ahuja's federal complaint containing Ahuja's admission that he received University's termination letter on April 9, 1996. Ahuja filed his complaint on June 19, 1998, more that two years after learning University terminated his employment. Ahuja's allegations that University promised him continued employment as a full professorship and also $30 million up to and including June 19, 1996, are inconsistent with his admission that University terminated him in April 1996. Ahuja failed to address or otherwise "plead around" the inconsistent and self-destructive allegations in his federal complaint; therefore, the trial court properly disregarded Ahuja's inconstant allegations as sham pleading and sustained University's demurrer. (See *Cantu v. Resolution Trust Corp., supra,* 4 Cal.App.4th at pp. 977-878; *Owens v. Kings Supermarket* (19988) 198 Cal.App.3d 379, 384.)

3. *Public employment*

Ahuja's opening brief did not explicitly challenge that portion of the trial court's order sustaining the demurrer on the ground that plaintiff as a public employee had noncontractual right to employment. However plaintiff's complaint and appellate brief both largely contend that University wrongfully denied him tenure, and therefore we address this issue.

It is well established that the terms and conditions of public employment in California are determined by law and not contract. (*Miller v. State of California* (1997) 18 Cal.3d 808, 813-814; *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1690.) The Regents of the University of California are authorized and have adopted a formal system for determining whether nontenured instructors or assistant professors may obtain tenure. (*Chang v. Regents of University of California* (1982) 135 Cal.App.3d 88,90.) Ahuja has not alleged any failure by University to comply with that system in reaching its decision to deny him tenure. Therefore, the trial court properly sustained University's demurrer on this ground as well.[5]

4. *Administrative remedies*

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[5] University also raised as an alternative ground for demurrer and argues on appeal that Gill Williamson, Chairperson of the CSE Department, did not have authority to approve or make the purported $30 million settlement offer. However, the trial court did not rule on this alternative ground for demurrer. In light of our determination that the trial court properly sustained all other grounds for demurer, we do not reach that issue.

The trial court also sustained University's demurrer on the ground that Ahuja failed to plead exhaustion of administrative remedies. University's administrative decisions concerning its faculty, including denial of tenure, are reviewable by writ of mandate. (*McGill v. Regents of University of California* (1996) 44 cal.App.4th 1776, 1785-1786.) Exhaustion of administrative remedies is a jurisdictional prerequisite to obtaining judicial relief. (*Hittle v. Santa Barbara County Employee Retirement Association* (1985) 39 Cal.3d 374, 384.) Ahuja's complaint failed to allege exhaustion of administrative remedies. The trial court properly sustained this alternative ground of University's demurrer.

III *Denial of leave to Amend*

When a demurrer "is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we affirm. [Citation.] The burden of proving such reasonable possibility is squarely on he plaintiff." (*Blank v. Kirwan, supra,* 39 Cal.3d at p. 318.)

Ahuja failed to articulate how his complaint could be amended to state a cause of action. Instead, as discussed *ante,* he incorrectly contends his complaint as filed states two viable causes of action for breach of contract as well as seven non-contract claims. Because Ahuja failed to meet his burden to show that he could amend his complaint to state a cause of action, we conclude the trial court did not abuse its discretion in denying Ahuja an opportunity to amend. (See *Hendy v. Losse* (1991) 54 Cal.3d 723, 742-743; *J. B. Aguerrer, Inc. v.*

American Guarantee $ Liabiility Ins. Co. (1997) 59 Cal.App.4th 6, 18.) [6]

DISPOSITION

Order dismissing action affirmed. Respondent entitled to costs of appeal.

WE CONCUR: HIFFMAN, McDONALD

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[6] Appellant also seeks affirmative relief from our court, including a request that we intervene and order a court "higher than Superior Court" to conduct a jury trial on his claim. This we will not do.

APPENDIX C

IN THE SUPREME COURT OF THE SATES OF CALIFORNIA
EN BANC

NO. S087974

Mohan Ahuja,

Appellant,

v.

University of California et al.,

Respondents.

Petition for Review from opinion of the Court of Appeal, Fourth Appellate District, Division One, State of California

(Filed 28 June 2000)

Petition for Review DENIED.

Signed:
Brown
Acting Chief Justice